



**DEPARTMENT OF
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POLICY MEMO

Date: February 12, 2009

**To: State Staff, Contracted Case Managers, and Developmental
Disabilities Service Providers**

**Re: POLICY ON CRITERIA AND PROCEDURES FOR CIVIL
COMMITMENTS OF PERSONS WITH DEVELOPMENTAL DISABILITIES**

From: Jeff Sturm, Developmental Disabilities Program Director

The following policy dated October 1, 2008 replaces any and all other versions of the policy on the criteria and procedures for civil commitments.

POLICY ON CRITERIA AND PROCEDURES FOR CIVIL COMMITMENTS OF PERSONS WITH DEVELOPMENTAL DISABILITIES

STATE OF MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES DISABILITY SERVICES DIVISION Published October 1, 2008

I. PURPOSE:

This policy presents the criteria and procedures adopted by the Department of Public Health and Human Services for implementation of the civil commitment of a person with a developmental disability to the Montana Developmental Center or imposition of a community services treatment plan.

Montana law at Title 53, chapter 20, Montana Code Annotated (MCA) provides that a person with a developmental disability may be civilly committed under limited circumstances to the State operated residential facility for persons with developmental disabilities, the Montana Developmental Center (MDC). In addition, under this set of laws a person with a developmental disability who could be committed to MDC may be civilly committed instead to receive developmental disabilities community services through a court ordered treatment plan. When a civil commitment order is sought for these purposes, a State administered review committee provided for in the law at 53-20-133, MCA, the residential facility screening team (RFST), must make an initial determination of whether the person to be committed to MDC or to a court ordered community services treatment plan that meets the statutory criteria for commitment.

Under the civil commitment law, a person may not be committed to MDC or to a court ordered community services treatment plan unless the RFST, and in turn the State district court in accordance with the statutory criteria, determines the person is seriously developmentally disabled and in need of habilitation at MDC or needs to receive developmental disabilities community treatment services by order of the court.

This policy provides the criteria and procedures used by the residential facility screening team (RFST) in determining whether the proposed commitment of a person with a developmental disability to the Montana Developmental Center (MDC) or a court ordered community services treatment plan is appropriate. In addition, the

policy denotes the responsibilities of staff employed by the Department and by providers contracting to deliver developmental disabilities services in relation to possible commitments of persons. Departmental and contractor staff involved in possible commitments must comply, as applicable, with the requirements of this policy.

THIS POLICY DOES NOT GOVERN THE COMMITMENT OF PERSONS BY A COURT ACTING UNDER THE AUTHORITY OF THE CRIMINAL LAW STATUTES.

A person subject to court jurisdiction in a criminal proceeding may be subject to commitment to MDC through the criminal law statutes. Those commitments are not subject to the review of the RFST. Persons committed through a criminal proceeding, however, according to criminal statutes, must be found by the court to meet the criteria of having a developmental disability as defined in 53-20-202 MCA.

II. DEFINITIONAL CRITERIA FOR PURPOSES OF CIVIL COMMITMENT

A person may only be civilly committed to MDC or a court ordered community services treatment plan if they are determined by the RFST and the State district court to be seriously developmentally disabled and in need of the setting and services of MDC or of the proposed community services treatment plan.

The statutory definition of seriously developmentally disabled at 53-20-102, MCA, reads as follows:

"Seriously developmentally disabled" means a person who:

- (a) has a developmental disability;
- (b) is impaired in cognitive functioning; and
- (c) cannot be safely and effectively habilitated in voluntary community-based services because of behaviors that pose an imminent risk of serious harm to self or others.

The statutory definition of developmental disability at 53-20-102, MCA, in turn reads as follows:

"Developmental disability" means a disability that

- (a) is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation;
- (b) requires treatment similar to that required by mentally retarded persons;
- (c) originated before the person attained age 18;
- (d) has continued or can be expected to continue indefinitely; and
- (e) results in the person having a substantial disability.

The statutory definition of developmental disability is implemented through the following documents:

- Eligibility Determination Protocol for Developmental Disabilities Program Funded Services: dated July 1, 2008. This protocol specifies the criteria and procedures to be applied by departmental staff and other persons, as

delegated, for eligibility determinations of applicants for the various programs administered by the Developmental Disabilities Program.

- Determining Eligibility for Services to Persons with Developmental Disabilities in Montana, a Staff Training Manual by Dr. William Cook, PhD, dated July 1, 2007. This manual provides the professional procedures and criteria for implementation and application of the statutory definitions of developmental disability at 53-20-102 and 53-20-202, MCA.
- Eligibility Determination Form for Developmental Disabilities Programs (Adults Age 18 and Over) dated July 1, 2007. The form serves to structure and guide eligibility decision making pertaining to an applicant based upon the criteria and procedures adopted through these rules. This form is to be completed by Department staff and other persons as delegated.

These documents are available at

<http://www.dphhs.mt.gov/dsd/ddp/ddEligManualrev062107Phaserfinal.pdf>.

A Developmental Disabilities Program Quality Improvement Specialist (QIS) reviews appropriate records pertaining to an applicant for services to determine whether the person who is not currently receiving developmental disabilities services has a developmental disability in accordance with the eligibility criteria. Eligibility is not re-determined for individuals already receiving DD funded services or already residing at the residential facility (MDC) that have previously been determined to meet the eligibility criteria.

The statutory definition of "community based services" or "community based facilities" means those facilities and services that are available for the evaluation, treatment, and habilitation of persons with developmental disabilities in a community setting.

The statutory definition of "available" means:

- (i) that services of an identified provider or providers have been found to be necessary and appropriate for the habilitation of a specific person by the person's individual treatment planning team;
- (ii) that funding for the services has been identified and committed for the person's immediate use; and
- (iii) that all providers have offered the necessary services for the person's immediate use

III. THE RESIDENTIAL FACILITY SCREENING TEAM:

A. APPOINTMENT AND COMPOSITION

The residential facility screening team (RFST), appointed in accordance with 53-20-133, MCA by the Director of the Department of Public Health and Human Services (DPHHS) includes a consumer-interests representative, a service provider representative, a staff person from DPHHS familiar with institutional settings, and a staff person from DPHHS familiar with community services.

B. DUTIES AND RESPONSIBILITIES:

The residential facility screening team (RFST) has the following duties and responsibilities:

1. To develop and publish procedures which describe the operation of the committee and the process by which decisions are made;
2. To carry out its statutory mission of conducting reviews in accordance with the statutory criteria and procedures to determine whether a person for whom a civil commitment petition has been filed is seriously developmentally disabled and appropriate for placement into MDC or a court ordered community services treatment plan.
3. To conduct its review of proposed commitments through a review of diagnostic, treatment, social, placement, and other records appropriate for purposes of a sound determination and also in reliance upon a report from a Developmental Disabilities Professional, certified in accordance with State law, a Qualified Mental Retardation Professional (QMRP) or, if the matter pertains to a possible commitment to a court ordered community services treatment plan, then a Developmental Disabilities Program Case Manager;
4. To prepare a report for the State district court memorializing the RFST's determination. The report is to state the factual bases for the determination and describe any tests or devices used to evaluate the person.
5. To have a member available to appear at a commitment hearing in the State district court;
6. To provide:
 - a. the RFST's recommendation and report to the State district court;
 - b. notice of the RFST's determination to the parties specified in 53-20-125(3) MCA; and
 - c. the social and placement information relied upon by the RFST to the State district court, the county attorney, the respondent's attorney, and, if release is permissible under legal authorities governing the privacy of materials, any other requesting party. Any other party for purposes of release is limited to those parties receiving notice as specified in 53-20-125(3), MCA ; and
7. To develop and maintain a register of persons who have been reviewed for possible commitment by the RFST and a record of the determination made in their case.

IV. TERM OF CIVIL COMMITMENT

A standard commitment may not exceed a term of one year. If continued commitment to MDC or a court ordered community services treatment plan is desired, a petition must be filed with the State district court and a proceeding conducted to obtain recommitment.

A petition for civil commitment or recommitment may seek a shorter commitment term to MDC when appropriate to provide treatment for purposes such as resolution of prescription drug effects or to provide a more secure environment while behavioral changes are resolved.

If immediate placement into MDC is desirable due to exigent circumstances, then an emergency admission must be arranged through a Certified Developmental Disabilities Professional or a petition for an emergency commitment must be filed and the procedures for that type of proceeding complied with. An emergency commitment is limited to a term of 30 days.

A PERSON MAY NOT BE PHYSICALLY PLACED INTO MDC OR IN A COMMUNITY SERVICES TREATMENT PLAN UNTIL A CIVIL COMMITMENT ORDER HAS BEEN ENTERED BY THE STATE DISTRICT COURT.

If a person is currently committed to MDC and the RFST does not approve of the recommitment, the person can not remain in the service and must be referred for placement and return to their home community or to an alternative service or community if one has been found.

V. ASSESSMENT OF A PERSON FOR PURPOSES OF CIVIL COMMITMENT:

A. ASSESSMENT STEPS

Assessing a person to determine whether civil commitment of the person to MDC or alternatively to a court ordered community services treatment plan is necessary involves the following steps:

- 1) confirmation that the person has been determined by the Developmental Disabilities Program acting through a Quality Improvement Specialist (QIS) to have a developmental disability along with cognitive impairment;
- 2) there must be imminent risk of serious harm to self or others due to the person's behaviors;
- 3) the behaviors must prevent safe and effective habitation in voluntary community based services;
- 4) with respect to commitment to MDC, a further determination must be made by the court that the setting and the services of the institution are appropriate to meet the needs of the person or in the best interest of the person; and
- 5) with respect to commitment to a court-ordered community services treatment plan, a further determination must be made that there is a proposed individual treatment plan for treatment that:
 - a) adequately assures that the behaviors of the person are managed to provide for the safety of the community and the person;
 - b) effectively provides for the person's habilitation;
 - c) is fully funded; and
 - d) provides for the delivery of the necessary services from committed qualified providers.

B. PURPOSES OF TREATMENT IN CIVIL COMMITMENT SETTINGS

The Montana Developmental Center (MDC) is an institutional service setting for persons with developmental disabilities whose habilitation needs and potential to harm self or others necessitate provision in a relatively more secure environment with a high ratio of staff and specialized behavioral services. A person meets the criteria for civil commitment to MDC if they exhibit behaviors which make it unsafe or ineffective to place the person in voluntary community services and the treatment available through MDC is appropriate to the person's treatment needs.

A person who appears appropriate for civil commitment to MDC because the person exhibits habilitation needs and the potential to harm self or others may be considered for civil commitment to an involuntary community services treatment plan if the person can be expected to comply with a court imposed treatment plan, inclusive of any rights restrictions, which would render the placement safe and effective.

C. PERSONS WHO ARE APPROPRIATE FOR CIVIL COMMITMENT:

A person is appropriate for civil commitment if the person

1. exhibits the following behaviors:

- a. **overt acts of physical aggression:** The person exhibits physical aggression, which due to frequency and/or level of severity, has the imminent potential to or does cause serious injury to self or others and the person exhibits these behaviors at a frequency that has not been modified by documented, concerted efforts at intervention;
- b. **overt acts of sexual aggression:** The person commits overt acts of sexual aggression which due to frequency and/or level of severity have the imminent potential to or do cause serious harm to self or others; or
- c. **overt acts of verbal or psychological aggression** which, due to frequency and/or severity level, have the imminent potential to cause mental or psychological injury to self or others; or
- d. **overt acts that pose an imminent risk of serious physical, sexual, or mental injury** to self due to the acts of others, including retaliatory aggression by peers, exposure to abuse or exploitation by third parties, or accidents (e.g. pedestrian traffic accidents) resulting from failure to cooperate with necessary supervision; or
- e. **need for immediate skilled intervention in a secure setting:** The person exhibits behaviors that present a risk of serious injury to the person or to others and that need to be addressed on an interim basis in a secure setting with additional resources including more skilled staff and professionals.

2. has particular treatment needs based upon the behaviors that can be appropriately and effectively treated at MDC or through a court ordered community services treatment plan; and
3. has exhausted the treatment options available through developmental disabilities and other available appropriate community services, either by inability of the provider to provide sufficient services or by the inability or refusal of the person to cooperate with services offered.

D. COMMUNITY SERVICES OPTIONS FULLY EXHAUSTED

1. Existing Services

For a person for whom commitment is being sought who is currently served in community services, the Case Manager and others must document to the RFST that there has been a thorough consideration in the individual planning process of all feasible modifications in the setting, the individual delivery of services, housing, staffing, et al that could serve to resolve the person's behaviors and that those modifications that are feasible were implemented but proved to be ineffective. The record should show that consultation with appropriate Department staff, behavioral specialists, medical professionals, and others was obtained in the course of the efforts to address the behavioral problems. A person is not considered appropriate for commitment if there has not been adequate consultation and attempts made to modify the service milieu.

2. Other Community Services

For a person for whom commitment is being sought or for whom recommitment is being sought but who is referred to be considered for possible placement into community services, there must be documentation of efforts to obtain appropriate community services. Among the efforts that may be appropriate are the following:

- a. verbal and written contacts with the appropriate Case Manager and regional Developmental Disabilities Program offices, seeking help;
- b. referrals for services accompanied with complete information packets sent to all appropriate parties;
- c. verbal and written contacts with any family members involved, to seek their help;
- d. verbal and written contacts in pursuit of foster placement;
- e. verbal and written contacts with the services coordinator of the Developmental Disabilities Program, seeking help;
- f. if the person currently is in services, a written request to the Services Coordinator of the Developmental Disabilities Program for a service exchange; and

- g. verbal and written inquiry to the Developmental Disabilities Program as to possible temporary vacancies in services that the person could be in for a short time.

VI. INITIATING A CIVIL COMMITMENT:

A. TYPES OF JUDICIAL ORDERS:

In a developmental disabilities civil commitment proceeding there are four (4) possible types of commitments that may be petitioned:

1. a standard commitment to MDC that may not exceed one year;
2. an emergency commitment to MDC for 30 days to be used when a person must be removed from their current situation while the commitment process is pursued;
3. a court ordered community services treatment plan, that may not exceed one year, with treatment provided in the community by a qualified provider using a written community services treatment plan approved by the court and the RFST as a less restrictive alternative to commitment in a residential facility; and
4. an emergency court ordered community services treatment plan for up to 30 days.

Except for a court-ordered community services treatment plan as authorized under developmental disabilities civil commitment law, a State district court is prohibited from ordering the placement of a person into developmental disabilities community services or ordering the delivery of community services to a person.

B. CRISIS MANAGEMENT AND INITIATING JUDICIAL PROCEEDINGS:

1. FOR A PERSON CURRENTLY IN DEVELOPMENTAL DISABILITIES COMMUNITY SERVICES:

- a. **PRECOMMITMENT CRISIS MANAGEMENT:** If a person exhibits behaviors that cannot be met by their current developmental disabilities community services, the Case Manager and personal supports planning team should be attempting to manage such behaviors by seeking assistance, identifying alternative resources that can be used in their current placement, and/or seeking service alternatives and other means of intervention that will allow the person to remain in the community. Those efforts must be documented as denoted in Section V.
- b. **INITIATING A CIVIL COMMITMENT PETITION:** A person's planning team may direct a person's Case Manager to pursue a civil commitment or a court-ordered community services treatment plan. The Case Manager must in turn request that the county attorney file a petition in State district court.

Any other person may request the county attorney file a petition for civil commitment. The person's planning team should attempt to meet with any person who is seeking to petition for commitment. The team may also meet with the county attorney to discuss the appropriateness of the petition.

Since by law the RFST must review and recommend a civil commitment to MDC before a State district court may consider the petition for commitment, the matter must be submitted to and acted upon by the RFST. A copy of the petition is sent by the clerk of the district court to the chairperson of the RFST.

When seeking a court-ordered community services treatment plan, a copy of the proposed community services treatment plan must accompany the petition.

- c. **DEVELOPMENTAL DISABILITIES PROFESSIONAL'S REPORT:** The Case Manager must contact a Certified Developmental Disabilities Professional to complete a report on the person. The Certified Developmental Disabilities Professional must provide a report to the RFST in the event a commitment or emergency commitment to the residential facility is needed.

2. FOR A PERSON NOT CURRENTLY IN DEVELOPMENTAL DISABILITIES COMMUNITY SERVICES:

- a. **PRECOMMITMENT CRISIS MANAGEMENT:** If a person is not in services, initially a Case Manager must be assigned. The Case Manager must contact the Developmental Disabilities Program, and must refer the individual for evaluation by a Developmental Disabilities Program Quality Improvement Specialist (QIS) for purposes of determining eligibility for developmental disabilities services. The Case Manager should also assist the person in seeking any other available services. Those efforts must be documented as denoted in Section V.
- b. **INITIATING A CIVIL COMMITMENT PETITION:** The Case Manager must request that a county attorney file a petition in State district court. A copy of the petition must be sent by the court to the chairperson of the RFST.
- c. **DEVELOPMENTAL DISABILITIES PROFESSIONAL REPORT:** The Case Manager must contact a Certified Developmental Disabilities Professional to complete a report on the person. The Developmental Disabilities Professional must provide the report to the RFST.

3. FOR A PERSON CURRENTLY CIVILLY COMMITTED TO MDC:

For a person who is currently civilly committed to MDC, a petition for recommitment is filed in the State district court where venue is located, either county of residence at time of commitment or Jefferson County. A Qualified Mental Retardation Professional (QMRP), not a Certified Developmental Disabilities Professional, completes a report with a summary (or copy) of the current treatment plan attached.

When seeking to change the status of a person from civil commitment to MDC to civil commitment to a court ordered community services treatment plan, a copy of the proposed community services treatment plan must accompany the petition for recommitment.

4. FOR A PERSON CURRENTLY CIVILLY COMMITTED TO A COURT IMPOSED COMMUNITY SERVICES TREATMENT PLAN:

For a person currently civilly committed to a court ordered community services treatment plan, the Case Manager responsible for habilitation under the court ordered community services treatment plan may request the county attorney file a petition for extension of the court ordered community services treatment plan. A copy of the proposed community services treatment plan must accompany the petition to the court along with a written report by the Case Manager.

C. INFORMATION REQUIRED: The Case Manager or other party who is requesting a petition for civil commitment or civil recommitment must compile the appropriate information necessary for adjudicating the commitment and provide copies to the following parties no more than 3 days after the filing of the petition:

1. the **Residential facility screening team**, c/o the **DD Services Coordinator** in the DD Central Office in Helena;
2. the **Certified Developmental Disabilities Professional**, if a Certified Developmental Disabilities Professional is needed; and
3. the **residential facility**, in care of the **medical records department**, if commitment to the residential facility is sought.

If the person is already in the residential facility, a Qualified Mental Retardation Professional (QMRP) at the residential facility provides a written report to the RFST. If the person is under a court ordered community services treatment plan, the Case Manager provides a written report containing the recommendation and a summary of the current community services treatment plan to the RFST.

D. EMERGENCY CIVIL COMMITMENTS:

1. INITIATING AN EMERGENCY CIVIL COMMITMENT PETITION TO THE MONTANA DEVELOPMENTAL CENTER:

- a. A person may be admitted to the Montana Developmental Center (MDC) on an emergency basis if a person needs to be removed immediately from their current situation because of

serious risk of harm to others or to the person. By law an emergency placement may only be initiated by a certified developmental disabilities professional. MDC can not accept an emergency admission of a person unless it is authorized by a certified developmental disabilities professional. Arrangements for admission must be made with the Client Services Director at MDC by the certified Developmental Disabilities Professional. The immediate admission of a person to MDC on an emergency basis does **not** constitute a commitment of the person to MDC.

- b. Before the person can be taken to MDC, the certified DD professional must, prior to the admission, contact the facility superintendent or designee to confirm that the person has a developmental disability and that it is an emergency placement that is necessary to protect the person or others from death or serious bodily injury.
- c. The county attorney must file a petition for emergency civil commitment by the close of business (5:00 pm) on the next judicial day following the person's admission to the residential facility.

If a person is admitted to MDC on an emergency basis but a civil commitment petition is not properly filed before the close of business on the next judicial day, the DD Professional who requested the emergency admission, or the Case Manager, is responsible for assuring that the person is immediately returned to their home community and their prior placement unless other arrangements have been agreed to by all parties, including the person and any new service provider.

- d. The party physically delivering the person must ensure that the person being admitted arrives at MDC with basic necessities, such as an appropriate amount of clothing adequate to the season, at least a five (5) day supply of medications, a signed doctor's order for medications, and any adaptive or medical equipment needed for the person's daily medical or nutritional care. The delivering person must meet with the staff at MDC to review the person's needs and functioning level or the Case Manager must complete a conference call with MDC staff to review needs in order for an admission to occur. Once the person arrives at MDC, physical custody and control transfers immediately and completely to MDC staff and use of MDC procedures and behavior control.
- e. The completed packet of the admission and other information on the person's status and service needs is required at the time of or prior to arrival to the residential facility in order for the person to be admitted. It must be sent to the attention of the medical records department.

- f. The RFST and the certified DD Professional must receive the required information (see section VII) within two (2) working days of the petition being filed.
- g. An order for an emergency civil commitment to a residential facility may be entered without a hearing before the court if the court finds the record supports the order.
- h. The RFST must report back to the court by the close of business (5:00 pm) on the seventh (7th) judicial day following the emergency placement. The original court order expires by statute at that time. If the RFST recommends continued commitment, the court may extend the emergency order for no more than 30 days from the date of placement.
- i. An emergency civil commitment to the residential facility may not continue longer than 30 days after placement unless a petition for an extended commitment has been filed.

2. INITIATING AN EMERGENCY PETITION FOR CIVIL COMMITMENT TO A COURT IMPOSED COMMUNITY SERVICES TREATMENT PLAN:

- a. An emergency community services treatment plan may be imposed on an emergency basis without notice to the person or approval by the RFST when necessary to protect the person or others from death or serious bodily injury. The immediate admission of a person to a court ordered community services treatment plan on an emergency basis does **not** constitute a civil commitment of the person.
- b. A petition for a court ordered community services treatment plan may be filed by the county attorney and must include or attach the written report of a Case Manager and a copy of the proposed plan. Any emergency court ordered community services treatment plan must meet the conditions set forth in MCA 53-20-133 (4).
- c. The court may order an emergency civil commitment to a community services treatment plan without notice to the person or approval by the RFST when necessary to protect the person or others from death or serious bodily injury.
- d. The RFST must receive required information (see section VII) within two (2) working days of the petition being filed.
- e. An order for an emergency civil commitment to a community services treatment plan may be entered without a hearing before the court if the court finds the record supports the order.
- f. The RFST must report back to the court by the close of business

(5:00 pm) on the seventh (7th) judicial day following the emergency placement. The original court order expires by statute at that time. If the RFST recommends continued imposition of the court ordered plan, the court may extend the emergency order for no more than 30 days from the date from the first court order imposing the plan.

- g. The imposition of an emergency civil commitment to a court ordered community services treatment plan may not continue longer than 30 days after imposition of the plan unless a petition for an extended commitment has been filed.

3. PLANNING FOR A RETURN FROM MDC TO COMMUNITY SERVICES:

- a. During an emergency civil commitment to MDC, the community Case Manager is responsible for coordinating a plan for finding an alternative to placement at MDC before the end of the 30 day emergency commitment period.
- b. The Case Manager must schedule a meeting at MDC within five (5) working days of admission in order to develop a plan for the person's return to the community, a plan to be put in place before the end of the 30 day emergency commitment period.

The planning meeting should include at least:

- the person;
- the community Case Manager;
- a social worker from MDC;
- a Qualified Mental Retardation Professional (QMRP) or other representative from the Individual Treatment Planning Team at MDC;
- a representative of the Developmental Disabilities Program, and whenever possible, that representative will be from the Regional Office in the region the person is from;
- a representative from any provider agency or agencies serving the person at the time of the commitment;
- a legal guardian if there is one; and
- an advocate if the person has one.
- any family member involved with the person and any others who have been working with the person should be invited and encouraged to participate in this process (mental health counselors, senior center staff, medical professionals, others).

- c. The MDC transition plan checklist should be used when planning a return to community services.

E. APPROPRIATE USE OF A CIVIL COMMITMENT TO A COURT IMPOSED COMMUNITY SERVICES TREATMENT PLAN:

1. CONDITIONS FOR IMPOSITION OF A COURT IMPOSED COMMUNITY SERVICES TREATMENT PLAN:

Civil commitment to a court ordered community services treatment plan can be sought at the time of the attempt to initially commit a person to MDC or the attempt to recommitment a person to MDC. This type of commitment allows persons treatment, structure, and supervision while giving the person the opportunity to live in the community.

A court ordered community services treatment plan may be considered when community-based services would be safe and effective for a person if the person were under an order compelling the placement in services.

Before commitment to a court ordered community services treatment plan may be pursued it is necessary to develop an actual treatment plan to present to the RFST and the State district court. The plan needs to address the risks to self and others and impose restrictions or other conditions the court finds necessary to protect the person or the community.

The court ordered community services treatment plan must include, but is not limited to requiring the person to do the following:

- a. participate in a specified set of community-based services;
- b. participate in services addressing the behaviors that cause risk to self or others, including but limited to group or individual therapy, staff supervision, psychiatric care, or medication;
- c. abide by individualized restrictions on behavior or other conditions of continued participation that the court finds necessary to protect the person or the public, including but not limited to residential requirements, restrictions on access to intoxicants or weapons, productive use of free time, limited financial independence, curfew, or authorization for providers to share information about the person with law enforcement.

VII. INFORMATION REQUIRED:

A. ALL SETS OF INFORMATION MUST INCLUDE THE FOLLOWING REGARDLESS OF THE TYPE OF COMMITMENT:

1. A cover letter explaining what is desired for the person, why this most restrictive setting is being sought, what has been tried and why it has not worked, generally what has been happening that has led to this request;
2. A comprehensive psychological evaluation of the person that includes adaptive and maladaptive behavior;
3. A current diagnosis for the person as well as other relevant diagnoses;
4. A comprehensive social history of the person;

5. A comprehensive description of the person's current status/situation;
6. A comprehensive medical history and information for the person that must include medications history (**see appendix A**);
7. The current and recommended treatment plans for the person inclusive of needed staffing ratios (day and night);
8. A narrative of attempted solutions to the person's current problems;
9. Ancillary service reports available and obtained as needed;
10. The names and contact information for involved parties, inclusive of family members and advocates;
11. The guardianship status along with the name and contact information for a named guardian;
12. If a behavior problem exists, detailed information regarding the severity and frequency of the behavior, what programming has been tried, how many staff must intervene, and any psychological reports or recommendations regarding the behaviors;
13. If a self-help deficit exists, detailed information regarding the degree of assistance needed, how much staff intervention is required;
14. If a medical need exists, detailed information regarding the care that is needed;
15. Any physical limitations requiring adaptive or other special equipment or physical site requirements;
16. Any special communication needs (manual sign, communications board);
17. For a commitment to community services, a copy of the proposed community services treatment plan.

All information is to be copied one-sided with no staples.

B. A PROPOSED COMMUNITY SERVICES TREATMENT PLAN MUST PROVIDE DETAIL THAT ADEQUATELY CONFORMS TO THE FOLLOWING STATUTORY REQUIREMENTS FOR THIS TYPE OF COMMITMENT:

1. adequate assurances of safety from the consequences of the person's behaviors for both the person and the community;
2. effective habilitation services for the person's developmental disability;
3. funding from public or private sources that is identified, committed, and available to pay for all of the proposed services to the person;
4. services from identified, qualified providers that are committed and available to provide all of the proposed services to the person.

VIII. RESIDENTIAL FACILITY SCREENING TEAM DETERMINATION:

- A. The RFST reviews the materials as well as the certified developmental disabilities professional's report, and assesses whether the person is seriously developmentally disabled, based on the statutory definition.

Prior to making a recommendation to civilly commit or recommit a person, or that the court impose or extend a community services treatment plan, the RFST

can require an additional professional evaluation by a treatment professional that provides sexual offender treatment or is Montana Sex Offender Treatment Association (MSOTA) qualified if the RFST determines that it needs such an assessment in order to complete its determination.

B. Residential Facility Screening Process

1. Upon reviewing a petition for civil commitment or recommitment of a person to MDC or a court ordered community services treatment plan, if the RFST determines that a person meets the criteria for commitment, the RFST can recommend to the State district court that the court order the commitment or recommitment of the person or that the court impose or extend a community services treatment plan.
2. If a person does not meet the criteria for civil commitment or recommitment, the RFST can not approve the commitment or recommitment. If the RFST cannot reach consensus, it can not approve the commitment or recommitment or the imposition or extension of a community services treatment plan.
3. The RFST sends notification of its determination to the Case Manager or other party initiating the petition, the person, the responsible person, the person's parent, guardian, or advocate, the attorney for the person, and next of kin, if known.
4. If it is an emergency commitment, the person can only be committed for 30 days unless the petition also includes a request for a full one-year commitment. In that case, the RFST issues simultaneous recommendations on both requests.
5. The RFST may approve and the State district court may impose a community services treatment plan if the plan meets the statutory conditions noted above in Section VII.B. The court may not impose a community services treatment plan unless the RFST certifies all services in the proposed plan meet the above conditions.

C. AMENDMENT TO COMMITMENT ORDER OR TREATMENT PLAN:

1. A court ordered community services treatment plan may be amended with the consensus of the person's planning team, including the person, without further court order. The RFST must certify that the amended plan meets the conditions (c) and (d) previously noted in Section VII. B.
2. An order of commitment to MDC may be amended to an order imposing a community services treatment plan with the consensus of the personal supports planning team, including the person, and the court shall issue an order imposing the agreed upon community services treatment plan. The RFST must certify that the proposed community services treatment plan meets the conditions (c) and (d) previously noted in Section VII. B.
3. Any party may request amendment of a commitment ordered or a community services treatment plan imposed by bringing the matter to the attention of the person's treatment planning team. If consensus is not

reached, any party may request a hearing on the proposed amendment. The court shall request an evaluation of any proposed amendment by the RFST prior to the hearing.

4. After a hearing or upon the agreement of the parties on an amendment of a commitment or an order imposing a community services treatment plan, the court may make any order which is authorized in the code including:
 - a. adding, removing, or modifying conditions of a community services treatment plan
 - b. substituting commitment to MDC for a court imposed community services treatment plan
 - c. substituting imposition of a court imposed community services treatment plan for commitment to a residential facility (MDC)
5. Any community services treatment plan imposed as a result of a request for amendment must meet the conditions previously noted. The court may not impose a community services treatment plan unless the RFST certifies that all services in the proposed plan meet the conditions (c) and (d) previously noted in Section VII. B.
6. If the court finds probable cause to believe that the person or others are in imminent risk of death or serious bodily injury, the court may order a temporary amendment to a community services treatment plan, for a period of up to 7 calendar days, without notice to the person. A hearing must be scheduled within the 7-day period of the temporary amendment. Any temporary amended community services treatment plan must meet the conditions previously noted.


IX. DECISION BY THE JUDGE:

The RFST files its determination with the State district court where the petition was filed. The judge issues an order regarding commitment of the person, after the person has an opportunity to request a hearing. The judge cannot order commitment if the RFST finds the respondent is not seriously developmentally disabled or recommends against commitment. The judge cannot order a community services treatment plan unless the RFST finds the person is seriously DD and certifies that the plan meets the criteria of 53-20-133(4) (c) and (d). The judge can decline the petition even if the RFST has recommended commitment or imposition of a community services treatment plan, if the court finds that commitment or imposition of a community services treatment plan is not in the best interest of the respondent.

X. APPEAL PROCESS:

- A. Determinations by the residential facility screening team (RFST) that recommend civil commitment of an individual to the residential facility or court imposition of an involuntary community services treatment plan may be challenged in the State district court in which the petition was filed, by requesting a hearing on the Petition, in writing, within 15 days of service of the RFST report.
- B. If either the RFST or the court finds the person has a developmental disability but is not seriously developmentally disabled, the court must dismiss the petition and refer the person to Department of Public Health and Human

Services to be considered for placement in voluntary community-based services according to MCA 53-20-209.



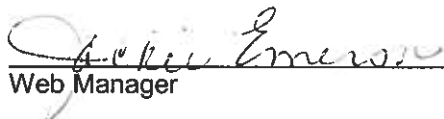
Services Coordinator

2/12/09
date



Developmental Disabilities Program Director

2-12-09
date



Web Manager

2/12/09
date

APPENDIX A

The following original documents need to be sent with persons transferring to the Montana Developmental Center:

- Social security card
- Birth certificate
- Medicaid card, if applicable

This medical information needs to be sent with persons transferring to the Montana Developmental Center:

- List of current primary care physician, psychiatrist, and other physicians
- Reports by physician visits for the last year, including psychiatry
- Latest vision, hearing, and dental exams
- A minimum of 5 days of medications and treatment supplies
- A written doctor's order for medications
- Immunization records
- Last month of vital signs and weights
- Latest lab reports (include where performed) including PAP and mammogram, if applicable
- Reports of any X-rays or other tests done within the past year
- Medication profile (below)

MEDICATION PROFILE

Name _____ Date of Birth _____
Address _____
Allergies _____
Adverse Reactions _____

DATE STARTED	MEDICATION	DOSING SCHEDULE	INDICATION	ORDERING MD